

THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

VOL. VII, No. 139

OCTOBER, 1925

PAGES 1-24

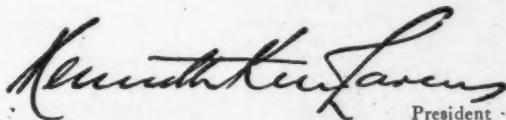
Published by

THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.

120 BROADWAY

To provide more space for the handling of our business and greater convenience for those having business with us, the New York office of The Corporation Trust Company has been moved to 120 Broadway, third floor of the Equitable Building, served from the main lobby, Nassau Street entrance, by our own private elevator. The Organization and Service Departments are provided with increased space and enlarged facilities for their greatly increased activities, and the Transfer Department, which has grown so phenomenally in recent years, is now installed in quarters excelled by none in the city. We hope all our friends will seize the first opportunity to pay us a personal call in our new location.



President

The Journal Enlarged

Beginning with this issue, The Corporation Journal has been enlarged to 24-page size. Space will thus be available for reporting more of the important decisions on corporation matters and also for summarizing each month the more important rulings and decisions of various Federal bodies, of interest to lawyers, accountants and corporation officials.

Because of the change in size and scope, the usual biennial index has been made to cover from April, 1923 (date of the last complete index), to the present number. Copies of this index will, as usual, be sent to all those registered as having Journal binders. A few extra copies have been printed for others who express a desire for them.

The growing interest shown in the Journal, and the steadily increasing use being made of it by lawyers, is very gratifying to us and the increase in size and scope is made in acknowledgment.

THE CORPORATION TRUST COMPANY

120 Broadway, New York

Affiliated with

The Corporation Trust Company System

15 Exchange Place, Jersey City

Organized 1892

Chicago, 112 W. Adams Street

Pittsburgh, Oliver Bldg.

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WILMINGTON, DELAWARE
(The Corporation Trust Co. of America)

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar

VOL. VII, No. 139

OCTOBER, 1925

PAGES 1-24

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost (\$2) and thereafter each copy will be punched to fit the binder.

The Corporation Trust Company, publisher of the Journal, was founded in 1892 to gather and compile for lawyers official information in regard to the laws, regulations, court decisions and local practice in various states relating to the organization, qualification, taxation and maintenance of business corporations; and to assist attorneys in the details of organization or qualification in any state.

For the conduct of this branch of its business the company now has offices and representatives in every state and territory of the United States and in every province of Canada. It furnishes complete and up to the minute information, precedents and assistance in drafting all required papers for incorporation or qualification in any state, territory or province, and under the attorney's direction performs all necessary steps, and furnishes the statutory office or agent required. This service is rendered to members of the bar only.

Because of the unique organization thus built up, especially trained and experienced in the gathering and furnishing of exact official information, it naturally fell to the lot of The Corporation Trust Company to originate and furnish, as they became needed, The Federal Tax, Federal Reserve Act, Federal Trade Commission, Supreme Court, and New York Tax Services; The Corporation Tax Service, State and Local; The Stock Transfer Guide and Service (covering all requirements under the various state Inheritance Tax and Federal Estate Tax Laws, the various state probate laws, and the Uniform Requirements of the New York Stock Transfer Association, relating to the transfer of corporation securities); The Congressional Service (covering proposed legislation in Congress); and special services to lawyers and their clients having business to take up with committees, commissions, boards or officials at Washington.

Incorporated under the banking law of the State of New York, and its affiliated company incorporated under the trust company law of the State of New Jersey, the company is also qualified to act for corporations as Transfer Agent or Registrar of their securities, or as Trustee, Custodian of Securities, Escrow Depositary, or Depositary for Reorganization Committees. As an adjunct to these services it also assists counsel in procuring the listing of securities on the New York Stock Exchange.

Details of any of these services will gladly be furnished at any of the company's offices.

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Having offices and representatives in every state and territory of the United States and every province of Canada and a large, trained organization at Washington, this company —

—furnishes attorneys with complete, up to date information and precedents for drafting all papers for incorporation or qualification in any jurisdiction;

—files for attorneys all papers, holds incorporators' meetings, and performs all other steps necessary for incorporation or qualification in any jurisdiction;

—furnishes, under attorney's direction, the statutory office or agent required for either domestic or foreign corporation in any jurisdiction;

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Being incorporated under the Banking Law of New York, and its affiliated company incorporated under the Trust Company Law of New Jersey, the combined assets always approximating a million dollars, this company —

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The Federal Tax Service
 Corporation Tax Service, State and Local
 New York Tax Service
 Congressional Legislative Service
 Federal Reserve Act Service
 Supreme Court Service
 Federal Trade Commission Service
 Stock Transfer Guide and Service

The Corporation Journal Index. An index covering Volume VI—May, 1923, to June, 1925—is being mailed herewith to each of our subscribers who has a journal index. A small additional supply of this index has been printed and copies will be sent upon request so long as they remain available.

Talks on Agreements for Corporate Financing

1. Introduction.

Agreements for corporate financing widely vary in their terms and forms in order to meet the needs of various businesses, types of securities and methods of distribution. It is the purpose of this series of short talks merely to direct attention of corporate officers and counsel to some of the high points, as warnings, so to speak, of what may be expected in nearly all such transactions. Attention to these warnings may save delay or even more serious difficulties. In the first place, since the corporation is usually a supplicant for aid, it must usually meet the broker's and banker's terms, including the terms and conditions as to corporate structure, methods and records which counsel for the broker or banker may dictate. It is useless to make argument against these requirements. The broker or banker desires the opinion of his own counsel approving as to legal form the securities offered and any

qualification or limitation in such opinion will prevent the opinion sought from being what the broker or banker wants, either for his own use or to be passed on to the public. Therefore the business must be in such shape as counsel for the broker or banker will unqualifiedly endorse. If the exact requirements of such counsel could be ascertained in advance, many troubles encountered in financing would fade away to almost nothing compared with the actual difficulties met in practice. But in ordinary practice counsel for the corporation must do the constructive work; he alone must anticipate not only what he thinks are the needs to be met, but he should try, at least, to anticipate what counsel for the banker or broker thinks are necessary. In our next talk on this subject, we propose to discuss anticipation of banker's and broker's requirements in the contents of certificates of incorporation, and description and contents of securities to be offered.

Domestic Corporations

California.

Constitutional prohibition against shares of stock of other than a single par value. The Supreme Court of California, holds in a recent decision, that it was the intent of the framers of the state constitution in inserting the provisions of sections 3 and 12 of article XII touching on the relative voting influence and proportional liability of the stockholders of corporations to require that corporations organized thereunder should have their capitalization represented in shares of a single par value, and that such must be required of those seeking to organize corporations or to amend the articles of corporations already organized in the state so long as the aforesaid provisions of the constitution remain unchanged. In the instant case, the Del Monte Light and Power Company, a domestic corporation, organized in 1919, with its preferred and common stock of a stated par value of \$100 per share, sought to amend its articles of incorporation under amendments to the Civil Code, enacted in 1923, so as to provide for a certain number of shares of preferred stock of a par value of \$100, and a certain number of shares of common stock to be without nominal or par value. The Supreme Court in upholding the Secretary of State in his refusal to file the amended articles relies on the case of Film Producers, Inc. v. Jordan, 171 Cal. 664, and further says that to allow the filing of the articles would be to overrule that decision to the extent of holding that it was *not* the intent of the framers of the constitution in placing therein the above mentioned sections, to require that the capitalization of corporations should be represented in shares of a single par value. Del Monte Light and Power Co. v. Jordan, Secretary of State, Vol. 70 California Decisions 115. Chickering & Gregory and Garrett W. McEnerney, both of San Francisco, for petitioner. U. S. Webb, Attorney General, and Robert Harrison, Deputy Attorney General, for respondent.

Understanding that the Attorney-General had rendered an opinion to the Secretary of State applying the above decision to foreign corporations, we wrote to him under date of August 31, 1925, and received the following in reply:

STATE OF CALIFORNIA
OFFICE OF ATTORNEY GENERAL

September 2, 1925.

The Corporation Trust Company,
Bank of Italy Building,
Los Angeles, California.

GENTLEMEN:

I have before me your letter of August 31st requesting that I send you a copy of the opinion of this office to the Secretary of State expressing the view that he no longer accept for filing

charters of foreign corporations having par and no par stock or two or more classes of stock with different par values.

In reply permit me to state that there was no written opinion of the character noted by you. The Secretary of State was orally advised by this office that foreign corporations were not privileged to do business in this state upon any more favorable grounds than those permitted to domestic corporations. The Supreme Court held in the case of *Del Monte Light & Power Company v. Jordan* that a domestic corporation could not have a corporate structure consisting of par and no par stock because of the inability under such structure to apply the constitutional liability of stockholders. It was previously held by the Supreme Court that a liability of stockholders was necessary in all foreign corporations doing business in this state. Therefore, the Secretary of State was orally advised that foreign corporations having such corporate structure, similar to that in the *Del Monte* case, as would prevent the application of the stockholder's liability, should not be permitted in this state.

Very truly yours,
U. S. WEBB, Attorney General.

By ROBERT W. HARRISON,
Chief Deputy.

Delaware.

Where court has no jurisdiction of officer injunction restraining corporation from transferring his stock will be denied. This proceeding involves a bill for an accounting against a nonresident officer of the Educational Pictures Securities Corporation and a temporary injunction against the corporation to restrain the transfer of certain shares of stock standing in the officer's name. The corporation objects to being restrained from transferring the officer's stock because the court has no jurisdiction over the officer and being powerless to restrain him from selling and transferring it, the corporation ought not to be restrained from making the transfer on its books. The Court of Chancery in denying the injunction says: "He is a non-resident. The bill is for an accounting and seeks a purely personal decree for the payment of money. It in no wise concerns or relates to the shares of stock which Hammons owns; it sets up no equity against those shares. The only possible interest that the complainant can have in those shares is that in case a decree is made against Hammons, the corporation might resort to them in satisfaction, so far as possible, of the sum found to be owing by their owner. The only purpose therefore, which the injunction that is now sought can serve, is to hold the shares where they now are, in Hammons' name, so as to be available for satisfaction of a possible decree." *Skinner v. Educational Pictures Securities Corporation et al.*, 129 Atl. 857. James I. Boyce, of Wilmington, for complainant. Caleb S. Layton (of Marvel, Marvel, Layton & Hughes), of Wilmington, for defendants.

Louisiana.

President required to call meeting of stockholders. In a proceeding for mandamus to compel a corporation and its president to call a meeting of its stockholders it was shown that the charter provided that the annual meeting of stockholders should be held on the second Monday of May in each year. On that day in 1924, some of the stockholders assembled for that purpose but the president protested that one of the stockholders had not been notified and announced that he would contest anything done under the circumstances. The Supreme Court of Louisiana in directing the president to call the meeting says: "Such a position is, of course, untenable. It is the plain ministerial duty of the president to call said meeting, whether requested to do so or not; and, if the stockholders do anything they have no right to do, it will then be his privilege to complain." *State ex rel. Dendinger et al. v. J. D. Kerr Gravel Co. et al.*, 104 So. 60. *Cappel & Plauche*, of Covington, for appellants. *J. D. Dresner*, of New Orleans, *Thos. M. Burns* and *Jas. T. Burns*, both of Covington, and *M. L. Dresner*, of New Orleans, for appellees.

Corporation may institute proceedings for interdiction of insane person. In view of Article 391, Civil Code, providing that if the person who should be interdicted has no relations and is not married or if his relations or consort do not act, the interdiction may be solicited by any stranger, a corporation has the right to institute proceedings for the interdiction of an insane person. The Supreme Court of Louisiana in passing on this point says: "Under these provisions of the Code, we have no hesitancy in holding that when the husband is insane, and neither his wife nor any of his relations petition for his interdiction, a stranger and even a corporation may do so, at least, when the corporation shows an interest to sue for the interdiction." *Interdiction of Giacona*, 103 So. 721. *Theo. Cotonio*, of New Orleans, for appellants. *Emile Pomes* and *Frank S. Normann*, both of New Orleans, for appellees *James Demourelle & Sons, Inc.*, and the *Orleans Lumber & Building Material, Inc.*

Michigan.

Not necessary to violation of blue sky law that sale be consummated within state. The Supreme Court of Michigan makes the following comment to show that it is not necessary that the sale of unapproved securities be consummated within the state in order to incur liability under the Blue Sky Law; negotiating or offering for sale being sufficient: "The statute prohibits the sale by any person himself, or by others acting for him, the offering for sale, the taking subscriptions for or the negotiating for a sale in any manner whatever. The words 'in this state' which follow, would seem to apply with equal force to any of the acts which are prohibited. The statute has no application to acts performed without the state. It seeks to protect the citizens of this state in their investments by providing that securities offered for sale to them must first be approved by the commission. If it be charged that an unlawful sale has been made, it must appear

that the sale was made in this state. If, however, the charge be that securities not approved by the commission were offered for sale, the fact that the sale was not completed within the state would be immaterial. The unlawful act was the 'offering for sale.' If it was committed within the state, it would be immaterial whether it was intended that the sale would be finally consummated in this state or some other state. The same reasoning, we think, applies to the act of negotiating for the sale of such securities. Such a negotiation is prohibited by the statute. The offense is committed when the negotiation is had, even though no sale be consummated as a result thereof. * * * The negotiation must, of course, be conducted in this state. Liability for a violation of the provision may not be evaded by arranging that the subscription secured as a result of the negotiation is to be sent by the subscriber to a place without the state and the sale consummated by the mailing of the stock to him." *People v. Augustine*, 204 N. W. 747. *Rosslyn L. Sowers*, of Charlotte, *Burritt Hamilton*, of Battle Creek, and *George A. Kelly*, of Detroit for appellant. *Andrew B. Dougherty*, Atty. Gen., *Carl D. Mosier*, Asst. Atty. Gen., and *C. B. Fisk Bangs*, Pros. Atty., and *Claude J. Marshall*, Asst. Pros. Atty., both of Charlotte, for the people.

Missouri.

Assignment of tax bills by officers of construction company. Use of rubber stamp as signature. This action involves the assignment of tax bills by officers of a construction company, the assignment taking the following form: "Wm. F. Riley Construction Co., F. A. Riley, Sec'y, Contractor"; the words "Wm. F. Riley Construction Company", being rubber stamped and the signature "F. A. Riley, Sec'y, Contractor", being written in ink under the company's name. The St. Louis Court of Appeals in holding the assignment valid appears to base its decision on the fact that the president, Wm. F. Riley, was present during the transaction, that he appeared to be conducting the negotiations and it could be inferred that the secretary affixed the signature at his behest; that the president had power to assign the tax bills in view of the fact that they were received instead of money for work done and it was contemplated that they were to be exchanged for money. The act of the president is selling and assigning the tax bills constituted ordinary business which he was authorized to transact, and evidence of his authority to make the assignment would not be required. As to the signature the court says that the situation presented is not whether the secretary alone possessed authority to bind the contractor, but whether the president and secretary, acting in concert possessed such authority. Even though the signature of "F. A. Riley, Sec'y", be treated as *descriptio personae*, this leaves the rubber stamp signature of Wm. F. Riley Construction Company intact, and it is a well settled rule of law that any mark intended as a signature acts as such. The president was present and it may be inferred that he saw it so affixed, and consented and intended that it act as the signature of the corporation in the matter of the assignment. *City of Maplewood ex rel. and to use of Citizens' Bank of Maplewood v. Johnson et al.*,

273 S.W. 237. Wilfred Jones and Robert B. Denny, Jr., both of Clayton, for appellant. Alexander McLeod, of Maplewood, and Joseph C. McAtee, of Clayton, for respondent.

New Jersey.

Elements necessary to establish de facto corporation. In a bill for a preliminary injunction by the Paragon Distributing Corporation against the Paragon Laboratories, Inc., involving the granting of an exclusive sales agency to the distributing corporation, one of the defenses set up was that the contract was invalid in that there was no mutuality, because the distributing corporation had not been incorporated at the time the contract was executed by the two companies. The Court of Chancery of New Jersey in holding that the contract was not invalidated for this reason, finds that while there was no corporation de jure, sufficient had been done to establish one de facto. The court says that three things only are necessary to establish the latter sort of corporation: First, a valid law under which such a corporation might be incorporated; secondly, a bona fide attempt to organize under such a law; and three, an actual exercise of corporate powers. Finding all of these elements present the court holds that there was no want of mutuality in view of the establishment of a de facto corporation. Paragon Distributing Corporation v. Paragon Laboratories, Inc., et al., 129 Atl. 404. Ziegner & Lane, of Jersey City, for complainant. Perkins & Drewen, of Jersey City, for defendants.

New York.

Merger. " * * * No corporation shall change its name under this section [upon merger] unless the name assumed contains some word or abbreviation clearly indicating that it is a corporation * * *." (Chapter 649, Laws 1925.)

The above act amending the stock corporation law in relation to merger nullifies as future authority the case of Sizer Lumber Corporation v. Knapp, Secretary of State, 209 N. Y. Supp. 197, reported in The Corporation Journal, June, 1925, page 309. In that case the Supreme Court, Albany county (Special Term) held that the name of the merged corporation could be taken although it did not indicate corporate character.

North Dakota.

Charter not forfeited on failure to file annual report. The Supreme Court of North Dakota, holds in a recent decision that the failure of a corporation to file an annual report and pay the annual license fee does not, ipso facto, work a forfeiture of the corporate charter. At most, it affords prima facie evidence of the nonuser of the charter, and might amount to a violation of provisions of law by which it has incurred a forfeiture of its corporate rights, privileges, and franchises; but such a result would not follow until there has been a legal determination of the fact of violation. The statute in question,

section 4518 of the Compiled Laws of 1913, provides for an annual report to the secretary of state between July 1 and August 1, which shall show the names of the officers, with residence and post office addresses, the expiration of the terms of office, whether or not the corporation is pursuing an active business under its charter and the kind of business, which report is required to be accompanied by a filing fee. The statute then provides that failure to make the report and pay the fee shall be prima facie evidence that the said corporation is out of business and makes it the duty of the secretary of state to enter upon the records of his office the cancellation of the charter. The court in reaching the above conclusion says: "We are clearly of the opinion that proof of the failure to file an annual report and pay the filing fees would not establish the nonexistence of the corporation in the instant case, its charter never having been forfeited in a direct proceeding for that purpose, and that the attempt of the defendants in that direction would be an inadmissible collateral attack." *Farmers State Bank of Richardton v. Brown, Sheriff et al.*, 204 N. W. 673. *Murtha & Sturgeon, of Dickinson*, for appellant. *S. E. Ellsworth, of Jamestown*, for respondents.

Oklahoma.

On sale of corporate stock unpaid dividends declared before sale belong to seller. In an action involving a sale of corporate stock, the United States Circuit Court of Appeals (Eight Circuit) says that it is indisputable law, that if there be unpaid dividends on the day the contract of sale was made and completed, those dividends remain the property of the seller, and those declared after the making of the contract would become the property of the purchaser. The latter upon payment of the purchase price or upon deposit of it with instructions to pay it over to the seller on delivery of the stock properly assigned would become the owner and entitled to receive any unpaid dividends declared after the making of the contract. *Sautbine v. Stroud*, 5 F. (2d) 809. *C. B. Stuart, J. F. Sharp, M. K. Cruce and J. F. Sharp, Jr.*, all of Oklahoma City, for plaintiff in error. *Frank Wells, D. I. Johnston, and C. L. Billings*, all of Oklahoma City, for defendant in error.

Pennsylvania.

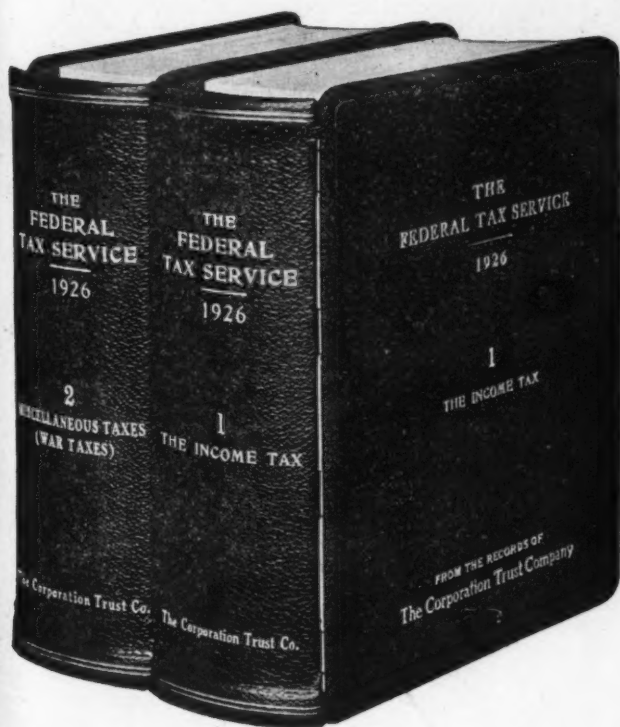
Amendment of charter. The following headnote appearing in connection with an opinion by the Assistant Deputy Attorney General to the Secretary of the Commonwealth, relative to the amendment of a corporate charter is self-explanatory: "A corporation sought to amend its charter so as to prevent the creation of certain future obligations or the creation of any additional class or classes of stock without first obtaining the consent of eighty-five per cent. of the stockholders. It was held that these objects could not properly have been accomplished by including provisions relating thereto in the original charter, there being no statutory authority for so doing; nor should the Governor be required to pass upon any matter not relevant to the essentials of form and substance required in the charters of proposed corporations. These objects not being proper in the original charter may not be accomplished by amendment. To so hold would

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The foundation for wholly unnecessary tax may be unintentionally but irrevocably laid at such times if the provisions of the revenue law, applicable to the transaction, and the official regulations and rulings and court decisions thereon, are not taken into consideration.

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relating to those taxes and the decisions of the new United States Board of Tax Appeals; presents all the supplementary rulings, including Opinions of the Attorney General, Solicitor's Opinions, Recommendations and Memoranda of the Advisory Tax Board and of the Committee on Appeals and Review, (neither of which bodies are now functioning but whose decisions are still of weight as precedents) Office Decisions, Decisions of the Income Tax Unit, Mimeo-graph Letters to Collectors

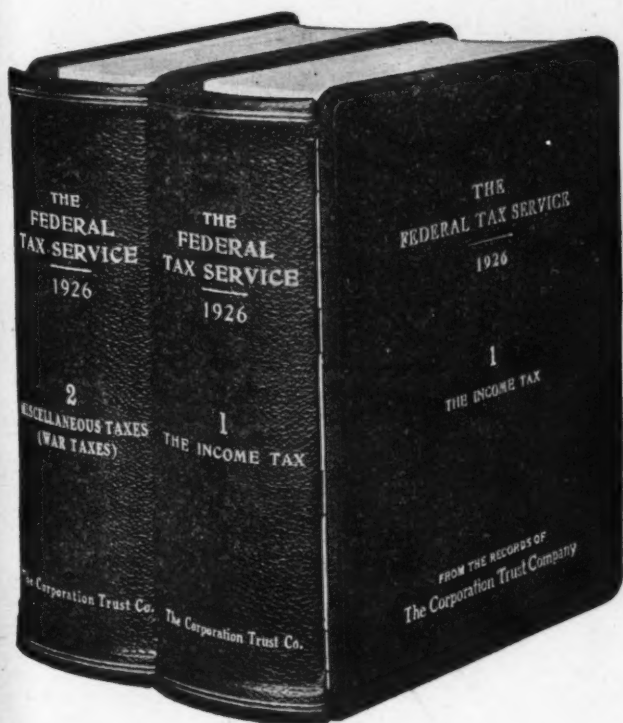
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and Agents: reproduces the COMPLETE TEXT of every controlling court decision either of the U. S. Supreme Court or lower courts and, in addition, summaries and citations of ALL OTHER prior lower court decisions on the taxes covered, since 1913. All this information is kept up to date throughout the year, and all is arranged and indexed on such a system that the exact portion or portions of it you need for any particular question can be located at once.

be to permit a corporation to do indirectly what it could not do directly. Amendments relate to the modification of existing conditions and not to the creation of new ones. Hence, the amendments are improper and should not be submitted to the Governor for approval. The proper method to accomplish said purposes is by appropriate provisions in the by-laws." In re: Amendment of Charters, 11 Dep. Rep. (Pa.) 1156.

Foreign Corporations

Kansas.

Provisions as to assembling and erection of machinery and attachment of parts held relevant and appropriate to interstate commerce transaction. This action was brought in Kansas, by the Kaw Boiler Works Company, a Kansas corporation having its principal office in Kansas City, Kan., against the Interstate Refineries, Inc., a Delaware corporation, having its principal office in Kansas City, Mo., to recover on a contract for furnishing an oil-cracking refinery at the Interstate company's plant in Kansas City, Mo. As a defense it was contended that the boiler works company was an unlicensed foreign corporation in Missouri and had agreed to assemble and erect the machinery and had attached certain parts in that state. It was shown that the apparatus was intricate and complex, both in its fabrication and in its operation. The process being new, no such equipment had heretofore been manufactured. It involved fabrication of steel of unusual quality, thickness, and other dimensions. It was designed to work under unusual temperature and extraordinary pressure. When the stills were finished and accepted it was found that the Interstate Commerce Commission rules would not permit shipment of such large apparatus on account of possible lack of clearance of bridges, etc. The Supreme Court of Kansas in allowing the boiler works company to recover on the contract holds that the provisions regarding the assembling and erection of the machinery at the point of destination and test it were relevant and appropriate to an interstate sale and further that the attachment of parts in view of the nature of the machinery and the Interstate Commerce Commission rule was also relevant and appropriate. *Kaw Boiler Works Co. v. Interstate Refineries, Inc.*, 236 Pac. 654. J. M. Johnson and C. O. French both of Kansas City, Mo., and A. J. Stanley, of Kansas City, Kan., for appellant. Edwin S. McAnany, Maurice L. Alden, and Thos. M. Van Cleave, all of Kansas City, Kan., and Clyde Taylor, of Kansas City, Mo., for appellee.

Kentucky.

Bringing suit to protect property rights does not require qualification. In an action against the Can-Bit Coal Company, which resulted in a judgment and order of sale of the property of the Can-Bit Coal Company, certain property of the Borderland Coal Sales Company, a foreign corporation, was embraced and sold through mistake. The

present action is brought by the Borderland Coal Sales Company against the purchaser of the property. The lower court dismissed the action on the ground that no compliance had been shown with the statute relating to foreign corporations. The Court of Appeals of Kentucky in reversing this holding says that the company may maintain the action to protect its property rights from a wrongdoer without compliance with the statute and that the purchaser under the judgment acquired no right to the company's property by his purchase in an action to which the company was not a party. *Borderland Coal Sales Co. v. Walker*, 270 S. W. 717. Hall, Jones & Lee, of Harlan, for appellant. Rader & Howard, of Harlan, for appellee.

Assisting local agency in advertising campaign does not constitute "doing business." The Court of Appeals of Kentucky, holds that a foreign corporation is not, under the following facts "doing business" in the state. In order to aid its sales agency, the George H. Cox Company, in the marketing of phonographs and accessories, the Phonograph Company, an Ohio corporation, developed a plan of advertising by which free concerts and exhibitions were given in public halls in Owensboro and other towns by paid artists in connection with the phonographs and records, all at the expense of the Cox company, free tickets being issued to persons desiring to attend; the notes sued on in the instant case represent the cost of several such exhibitions for which the Cox company agreed to pay, but being unable to advance the money allowed the Phonograph company to pay the cost and take the Cox company's note for the amount. It appears that the whole scheme was one of publicity for the Phonograph company intended to aid both companies in the marketing of the product in the territory assigned to the Cox company; that, while the Phonograph company assisted the Cox company in staging the exhibitions, the exhibitions were in fact put on by and for the Cox company, to whom all costs were charged. Consequently it does not appear that the Phonograph company was "doing business" in the state so as to require compliance in an action on the notes. *George H. Cox Co. et al. v. Phonograph Co.*, 270 S. W. 811. Slack, Birkhead & Slack, of Owensboro, for appellant. Sandidge & Sandidge, of Owensboro, for appellee.

Maryland.

"Regularly doing business" defined. The Court of Appeals of Maryland in construing article 23, sec. 118, Bagby's Code of 1924, providing, *inter alia*, that any person or corporation, whether a resident or a nonresident of the state, may sue any foreign corporation regularly doing business or regularly exercising any of its franchises in the state, for any cause of action, says that the word "regularly" ordinarily implies uniformity, continuity, consistency, and method, and excludes the idea of an occasional, accidental, incidental or casual use, and it must have been intended that it should have that meaning in the statute, because its obvious purpose is to qualify, narrow and limit the meaning of the phrase "doing business," and it could not have that effect, unless it were given its ordinary and accustomed meaning. Thus construed the irregular, occasional, or accidental use of the port

of Baltimore by "tramp" steamers, would not constitute "regularly doing business" or "regularly exercising" corporate franchises in the state. *Carter et al, v. Reardon-Smith Line, Limited, et al.*, 129 Atl. 839. *John B. Deming, of Baltimore (Keech, Deming & Carman, of Baltimore, on the brief), for appellants. Robert W. Williams and James Carey, 3d, both of Baltimore (Janney, Ober, Slingluff & Williams, of Baltimore, on the brief), for appellees.*

New Jersey.

Development of real estate for sale by foreign corporation is "doing business." In an action against a foreign corporation to foreclose a mortgage, it was shown that the mortgage was made and entered into in New Jersey and that it encumbered property located in the state; that the mortgage was recorded in the Monmouth county clerk's office, and that the corporation has mapped, plotted, advertised for sale, appointed agents to sell the various lots of the company, and taken steps to improve and develop its property for the purpose of selling it off in lots; in short the company did practically everything that any company engaged in the development of real estate would, under like circumstances do for the purpose of marketing its lands. In view of these facts, the Court of Chancery of New Jersey holds the company to be "doing business" in the state and in answer to a question covering service of process says that when a foreign corporation enters the state for the transaction of business, it submits itself to the jurisdiction, and service may then be made upon any officer or agent of the company in the same manner as domestic corporations may be served. *Brown v. John P. Smythe & Co., et al.*, 129 Atl. 871. *Lester C. Leonard, of Red Bank, for the motion. Quinn, Parsons & Doremus, of Red Bank, opposed.*

Sale of goods on orders accepted at home office does not constitute "doing business." In an action by a foreign corporation, it appeared that on numerous occasions prior to the making of the contract in suit the corporation had sold large quantities of its product to New Jersey customers, the delivery thereof being made and the purchase price collected in the state. No proof, however, was submitted that any of the contracts of sale were completed in the state; that is to say, that both the order for the goods and the acceptance of the order took place in New Jersey. The Supreme Court of New Jersey, in holding this not "doing business" says it is settled that the taking in the state of orders for goods by a representative of a foreign corporation which orders are transmitted to the home office of the corporation for approval and acceptance by it, and are there accepted, after which the goods are shipped from the home office or plant of the company to the buyer in New Jersey, does not constitute the transaction of business in the state within the meaning of the statute, even though payment for the goods sold is made by the buyer upon delivery to him in New Jersey. *Dickerson, Inc., v. Levine et al.*, 119 Atl. 783. *Peter J. McGinnis, of Paterson, for appellants. Robert H. Cunningham, of Paterson, for respondent.*

New York.

Investment and refunding operations not "doing business." The New York Supreme Court, Appellate Division (Third Department) says that investment and refunding operations conducted by a foreign corporation do not constitute "doing business" in the state. In support of this the court cites the case of *People ex rel. Manila Electric R. & Lighting Corporation v. Knapp*, 229 N. Y. 502, 510, in which it was said that there must be "continued efforts in the pursuit of profit and gain" to constitute "doing business." *People ex rel. Merrill et al. v. Gilchrist et al.*, State Tax Commission, 210 N. Y. Supp. 385. *Frederick J. Moses and O'Brien, Malevinsky & Driscoll*, all of New York (*Frederick J. Moses and Arthur F. Driscoll*, both of New York City, of counsel), for relators. *Albert Ottinger*, Atty. Gen. (*Henry S. Manley*, of Falconer, of counsel), for respondents.

Foreign corporation owning stock and having representation on board of another corporation not "doing business." A foreign corporation was not considered as "doing business" in New York simply because it owned one-half of the capital of a corporation which did business in the state and was represented by two directors on its board, was financially interested in its business, and in the event of the permanent disability of the manager, had the right to name one of the two joint managers of the business carried on by the corporation. The name of the foreign corporation was listed in the telephone book. However, it was shown that this was done by the resident corporation for the purpose of aiding it in selling the foreign corporation's product. The New York Supreme Court, Appellate Division (First Department) in reaching the above conclusion cites the case of *Philadelphia & Reading R. Co. v. McKibben*, 243 U. S. 264, in which it was said: "Nor would the fact, if established by competent evidence, that 'subsidiary companies' did business within the state, warrant a finding that the defendant did business there." *Lilienblum v. W. Wissotzky & Co.*, 209 N. Y. Supp. 704. *Boudin & Wittenberg*, of New York City (*Philip Wittenberg*, of New York City, of counsel; *Louis B. Boudin*, of New York City, on the brief), for appellant. *Lawrence & Wiseman*, of New York City (*Lawrence Wiseman*, of New York City, of counsel; *Oscar Lawrence*, of New York City, on the brief), for respondent.

Pennsylvania.

Right of foreign corporation to revoke appointment of secretary of state as agent. In an action against the American Tobacco Company, a New Jersey corporation, service was made upon the Secretary of the Commonwealth, as the duly appointed agent of the corporation. In attacking this service the company submitted an affidavit setting forth that in 1915 it had registered as a foreign corporation in Pennsylvania, appointing the secretary as its agent in the state, but further averring that it had ceased to do business in the state in 1916 and in January, 1917 filed a paper so certifying, wherein it attempted to revoke the prior appointment of the secretary as its agent. The lower court concluded that the corporation having gone through the form

of revoking the agency for service on it, that ended the matter, without inquiring into whether or not the company had continued to do intrastate business, although it was conceded that it had carried on business transactions of some sort in the state since the attempted revocation. The Supreme Court of Pennsylvania, in holding that the lower court erred, says that when a foreign corporation registers and appoints the secretary as agent, such appointment continues in full force and effect until the corporation bona fide withdraws from the state and ceases to do business therein; for, so long as it continues to do business, of an intrastate nature, after having registered, it is liable to be sued in the state. Unlike the ordinary agent who is selected by the principal, and may be discharged at will, the secretary is really named by the state, and may not be dismissed so long as any liability remains outstanding against the corporation in the commonwealth; or so long as it continues to do any intrastate business within the commonwealth; for the undertaking to name and retain the secretary as its agent, while so engaged, formed the consideration which moved the state to consent to the request that the corporation be allowed to carry on such business in the commonwealth. *Kraus v. American Tobacco Co. et al.*, 283 Pa. 146. *Leonard S. Levin*, of Pittsburgh appellant. *John G. Frazer and Reed, Smith, Shaw & McClay*, all of Pittsburgh, for appellee.

South Carolina.

Controlling resident corporation through stock ownership and supervising business constitutes "doing business." In an action against the Southern Enterprises, Inc., a Delaware corporation, it was shown that the corporation controlled through stock ownership the Palmetto Theatre Company, which latter company operated a theatre in the city of Columbia and that the corporation in like manner controlled a chain of theatres for which it made all bookings. It was further shown that the theatre was under the supervision of the corporation and complaints and suggestions by patrons were directed to it. Season passes issued by the theatre were issued on stationery of the Southern Enterprises, Inc., and countersigned by its district manager. In the instant case service of process was made on the manager of the theatre in the immediate employ of the Palmetto company. The Supreme Court of South Carolina, in holding the service valid says that the corporation through its large ownership of stock in the Palmetto company and through its supervision of the theatre operated by the Palmetto company was "doing business" in the state. *Ideal Theatre v. Southern Enterprises, Inc.*, 128 S. E. 166. *A. S. Barnard*, of Asheville, N. C., and *Douglas McKay*, of Columbia, for appellant. *C. T. Graydon and Cooper & Winter*, all of Columbia, for respondent.

Texas.

Sale by foreign corporation through local agency held intrastate transaction. In an action by the National Cash Register Company to recover balance due on the purchase price of a cash register it was shown that the company had an established agency in the city

of Dallas, which solicited orders, made sales, delivered machines and collected the purchase price. This agency had been there for a number of years and employed several people. In the transaction involved the purchaser had applied to the agency for a type of machine which was not in stock at Dallas. A written order was given and sent to the office of the company out of the state. The machine was shipped to the agency and delivered by it to the purchaser. The purchaser made a payment to the agency as part of the purchase price. The Court of Civil Appeals of Texas, in holding this to be an intrastate transaction, says that the suit should be dismissed in the absence of a showing that the corporation had a permit to do business in the state. *National Cash Register Co. v. Ondrusek*, 271 S. W. 640. Thomas, Frank, Millan & Touchstone, of Dallas, for appellant. Cecil L. Simpson, of Dallas, for appellee.

Washington.

Comment on statute relating to foreign corporations. In an action against the Hartwood Lumber Company, a foreign corporation, the Supreme Court of Washington says that foreign corporations, incorporated for any of the purposes for which domestic corporations may be organized under the laws of the state, are permitted to do business in the state on the same terms and conditions that a domestic corporation is permitted to do business. It must, however, as a condition precedent thereto, comply with certain prerequisites the statute provides. It must, among other things, cause to be filed and recorded in the office of the secretary of state a certified copy of its charter or articles of incorporation, and it must designate a principal place of business within the state and appoint a resident agent on whom process against it may be served. It is subject to fixed penalties and is also subject to ouster at the suit of the state if it fails to comply with these prerequisites. The court also says that the provisions of the statute that summons may be served on a foreign corporation "doing business within this state," means that a foreign corporation to do business within the state must transact within the state some substantial part of its ordinary business, continuous in the sense that it is distinguished from merely casual or occasional transactions. *Alto v. Hartwood Lumber Co.*, 237 Pac. 987. Welsh & Welsh, of Raymond, and A. D. Gillies, of South Bend, for appellant. Stephen V. Carey and Mark M. Litchman, both of Seattle, amicus curiae. G. F. Vanderveer and Everitt C. Ellis, both of Seattle, and Fred M. Bond, of South Bend, for respondent.

Taxation

Oregon.

Inheritance tax law. Decision of Supreme Court of United States in the Frick case followed. The Supreme Court of Oregon in holding that the amount paid as transfer taxes in other states should be deducted before computation of the Oregon inheritance tax follows the decision of the Supreme Court of the United States in the case of

Frick v. Commonwealth of Pennsylvania, 45 S. Ct. 603. The following is quoted from that decision in connection with shares of stock in corporations of other states and the fact that their transfer is subject by the laws of those states to a tax: "As those states had created the corporations issuing the stock, they had power to impose the tax and to enforce it by such means, irrespective of the decedent's domicile, and the actual situs of the stock certificates. Pennsylvania's jurisdiction over the stocks necessarily was subordinate to that power. Therefore to bring them into the administration in that state it was essential that the tax be paid. The executors paid it out of the moneys forming part of the estate in Pennsylvania and the stocks were thereby brought into the administration there. We think it plain that such value as the stocks had in excess of the tax is all that could be regarded as within the range of Pennsylvania's taxing power. *Estate of Henry Miller*, 184 Cal. 674, 683, 195 P. 413, 16 A. L. R. 694. So much of the value as was required to release the superior claim of the other states was quite beyond Pennsylvania's control. Thus the inclusion of the full value in the computation on which the state based its tax, without any deduction for the tax paid to the other states was nothing short of applying the state's taxing power to what was not within its control." *In re Perkins' Estate*. *Kay, State Treasurer v. Meyers*, 236 Pac. 1064. *Frank S. Sever, of Portland (I. H. Van Winkle, Atty. Gen., on the brief), for appellant. Robert S. Eakin of La Grande, C. T. Haas, of Portland, and George T. Cochran, of La Grande (Cochran & Eberhard, of La Grande, on the brief), for respondent.*

Washington.

Suit may be maintained against corporation whose name has been stricken for failure to pay license tax. This action is brought against the Superior Court of Snohomish County seeking to prohibit further proceedings in a trial against the Fruit Beverage & Canning Company, it being contended that at the time of the commencement of the action its name had been stricken from the books of the secretary of state because of failure to pay its annual license fees and that it had lost its existence at least to the extent that it was capable neither of suing nor of being sued. The Supreme Court of Washington in denying the writ points out that under the statute, there is no such thing as a dissolution of the corporation by the secretary of state and that while the name of the company is stricken for failure to pay the tax, it still has the right to be reinstated under the statute by payment of the tax due. Unquestionably the company would not be permitted to maintain an action, but there is no reason why it may not be sued and defend. So long as it may reinstate itself it is not dead, but its powers are merely circumscribed. The Court further says that in *State ex rel. New Arlington Hotel Co. v. Hinkle*, 115 Wash. 298, it was held that a new corporation could not take the name of an old corporation, whose name had been stricken, because it had the continuing right to be reinstated. *State ex rel. Bowen v. Superior Court of Snohomish County et al.*, 237 Pac. 722. *Oliver Anderson and Alex M. Vierhus, both of Everett, for relator. E. W. Klein, of Snohomish, for respondent.*

Notes

Many states require a certified copy of the law under which a corporation is organized to be filed with application for license as a foreign corporation. Where a corporation is qualifying in very many states the cost of such copies of the law runs into a large figure. In this connection the Detroit office of The Corporation Trust Company, while assisting counsel for a large Michigan corporation in the qualification of that company in forty-seven different states and the District of Columbia, obtained the following advice from the Secretary of State of Michigan:

"We wish to advise that we prepare for filing in other states authenticated copies of the corporation law, which have always been accepted in any state. An authenticated copy amounts to \$1 and a certified copy to \$72."

If, as this letter seems to indicate, authenticated copies do prove acceptable in all states, the great possibilities of economy will at once be apparent. Further developments will be reported in this department of The Journal.

The Corporation Trust Company has been appointed Co-Transfer Agent in New York of the Bernard Schwartz Cigar Corporation, Detroit, Michigan.

377 corporations were organized under the Laws of Delaware from August 20 to September 20. A significant point to be observed

from a study of the nature of the organizations represented is the number of old, prosperous, hitherto closely held corporations now reconstructing their capitalization structures for the purpose of securing a wider distribution of stock and greater cash capital, without disturbing control of the companies. The tendency in this direction began to show early in the present year and has steadily become more marked. Two, notable examples among the Delaware corporations filed during the past few weeks by The Corporation Trust Company are The Maytag Company, with 1,240,000 shares of no par value, and Lehn & Fink Products Company, with 1,150,000 shares of no par value.

A number of important mergers are also to be noted among the recent Delaware incorporations filed by The Corporation Trust Company, significant examples of which are Pie Bakeries of America, Inc., with \$10,000,000 Preferred Stock, 300,000 shares Class A Stock without par value and 500,000 shares Class B Stock without par value; International Harvester Export Company, with \$2,000,000 capital; Southern Dairies, Inc., with 750,000 shares without par value; Central and South West Utilities Company, a merger of five Insull companies, with 300,000 shares of Prior Lien Preferred, without par value, 300,000 shares Preferred, without par value, and 600,000 shares Common, without par value.

Pathe Exchange, Inc., for which The Corporation Trust Company

acts as Transfer Agent, is arranging to list its shares on the New York Stock Exchange.

The Corporation Trust Company filed incorporation papers in Maine

recently for the American-European Utilities Corporation, with 1,010,000 shares without par value. The company was formed by prominent utilities interests of the United States to hold stocks of foreign utilities companies.

Some Important Matters for October and November

This calendar does not purport to cover general taxes or reports to other than state officials, nor those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

GEORGIA—Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporation.

NEW MEXICO—Annual Franchise Tax due on or before November 30.—Domestic and Foreign Corporations.

NORTH CAROLINA—Annual Franchise Fee due on or before first day of December.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax due on or before December 1.—Domestic and Foreign Corporations.

UTAH—Corporation License Tax due between November 15 and December 15.—Domestic and Foreign Corporations.

THAT you may be better informed, and informed, in a more orderly way than the press dispatches make possible, of all that Congress does or proposes to do in regard to any particular subject in which you are particularly interested, is the purpose of the Congressional Legislative Service.

The Congressional Legislative Service was established by The Corporation Trust Company in 1910. You should be familiar with its purposes, methods and cost, whether you feel the need of it at present or not. Write today, without cost or obligation.

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120 Broadway, New York

Incomplete Incorporation

Under the laws of many states, as interpreted by the controlling court decisions, the right to transact business as a corporation is not granted until ALL the requirements of the law have been fulfilled.

Forgetting or overlooking such secondary, and apparently minor details as to file an affidavit of the payment of capital stock as required in some states, or to publish the certificate of incorporation a specified number of times as required in some, or to record the certificate with the county clerk of the county in which the principal office is located as required in others, has sometimes left the stockholders and directors in the legal position of doing business as partners, with the personal liabilities inherent in partnerships.

This is one of the reasons why so many experienced attorneys, wanting no such disaster to happen to any companies they have organized, are adopting more and more the policy of entrusting the filing of papers, and other corporate steps, to The Corporation Trust Company—even in their home states.

This company's constantly refreshed experience in all such matters, in all states, and its highly organized system of handling such work, leaves no room for personal lapse of memory or personal oversight of a detail.

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